

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Quality of Life Services Department**
AGENDA DATE: **January 25, 2005**
CONTACT PERSON/PHONE: **Deborah G. Hamlyn, Deputy City Manager 541-4686**
DISTRICT(S) AFFECTED: **All**

SUBJECT:

Amendment to Ordinance which established the Cohen Stadium Lease between the City of El Paso and El Paso Diablos, subsequently to a limited partnership under the name El Paso Baseball Club, L.P.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This amendment revised the obligation to pay rent; to approve the assignment of Lessee's interest to El Paso Professional Baseball, L.P.; add two option periods, delete reporting requirements and remove rental rates charged for outside events.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

NO

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*******REQUIRED AUTHORIZATION*******

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____



**OFFICE OF THE CITY ATTORNEY
M E M O R A N D U M**

**CONFIDENTIAL ATTORNEY-CLIENT AND/OR ATTORNEY WORK PRODUCT
COMMUNICATION NOT INTENDED FOR PUBLIC DISSEMINATION**

TO: Deborah Hamlyn, Deputy City Manager Quality of Life Services

FROM: Sylvia Borunda Firth, Assistant City Attorney *[Signature]*

SUBJECT: Cohen Stadium Lease Amendment

DATE: January 28, 2005

Attached you will find four (4) copies of the ordinance amending the Cohen Stadium lease that have been executed by El Paso Baseball Club, LLC and El Paso Professional Baseball, LP. Please sign all four copies where indicated and have them delivered to the City Clerk's office. This ordinance is scheduled for public hearing on February 8, 2005. Please have the City Clerk replace the documents previously sent with the attached.

If you have any questions, please give me a call.

Attachment

cc: Lisa Elizondo, City Attorney (w/o attachment)
Terri Cullen-Garney, Deputy City Attorney (w/o attachment)
Richarda Duffy Momsen, City Clerk (w/o attachment)

El Paso

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NUMBERS 009918, 010482, 010544, 011098, 011779, 012468, 013481 AND 015805 WHICH ESTABLISHED AND AMENDED THE ANDY AND SYD COHEN STADIUM LEASE BETWEEN THE CITY OF EL PASO AND THE EL PASO DIABLOS, INC., WHICH WAS SUBSEQUENTLY ASSIGNED TO EL PASO BASEBALL CLUB, LLC, A LIMITED LIABILITY COMPANY WHICH HAS BEEN CONVERTED TO A TEXAS LIMITED PARTNERSHIP UNDER THE NAME EL PASO BASEBALL CLUB, LP, TO REVISE THE OBLIGATION TO PAY RENT AS SET FORTH IN SAID LEASE; TO APPROVE THE ASSIGNMENT OF LESSEE'S INTEREST TO EL PASO PROFESSIONAL BASEBALL, LP; ADD TWO OPTION PERIODS; DELETE REPORTING REQUIREMENTS, AND REMOVE RENTAL RATES CHARGED FOR OUTSIDE EVENTS BE APPROVED BY CITY COUNCIL.

WHEREAS, the City of El Paso entered into a lease with the El Paso Diablos, Inc. which was subsequently assigned to El Paso Baseball Club, LLC which has been converted to a Texas limited partnership under the name El Paso Baseball Club, LP for the facilities known as the Andy and Syd Cohen Center.

WHEREAS, El Paso Baseball Club, LP desires to assign its leasehold interest to El Paso Professional Baseball, LP, a Texas limited partnership.

WHEREAS, El Paso Professional Baseball, LP, a Texas limited partnership, desires to assume all of Lessee's obligations arising from the lease and has requested two (2) five year options to extend the lease.

WHEREAS, the City of El Paso is willing to approve the assignment and grant two (2) additional options to renew in return for lease modifications pertaining to rent payments and reporting requirements.

WHEREAS, the lease currently requires the payment of percentage rate and revenue sharing and City Council to approve the rental rates charged for outside events held at Cohen Stadium.

WHEREAS, El Paso Professional Baseball, LP, a Texas limited partnership, proposes to pay fixed rate rent in lieu of percentage rent and revenue sharing.

WHEREAS, the parties have agreed that since the rent has been changed to a flat rate there is no need for the financial reporting or the approval of the outside rental rates.

WHEREAS, the lease between the City of El Paso and the El Paso Diablos, Inc. is hereby amended to incorporate the new rental rate, delete financial reporting requirements and the requirement that City Council approve outside events; and

WHEREAS, the Department of Parks and Recreation recommends approval of the assignment and the lease modifications.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That Ordinance numbers 009918, 010482, 010544, 011098, 011779, 012468, 013481 and 015805 are amended to allow for the assignment of the lease, the modification to the rental rates, the additional option periods, and the changes to the reporting requirement pursuant to the Lessor's Approval of Assignment and Lease Modification Agreement attached hereto as Exhibit "A".

PASSED AND APPROVED this the 8th day of February 2005.

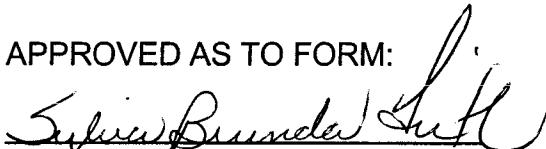
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:



Deborah Hamlyn
Deputy City Manager
Quality of Life Services

EXHIBIT "A"

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT AND LEASE MODIFICATION AGREEMENT

The City of El Paso ("Lessor") entered into a Lease Agreement dated December 29, 1989 ("Lease"), between the Lessor and El Paso Diablos, Inc. ("Diablos"). The Lease has been amended and modified from time to time and was subsequently assigned to El Paso Baseball Club, L.L.C. which has been converted to a Texas limited partnership under the name El Paso Baseball Club, LP ("Assignor") on August 6, 1996 covering the following described leased premises:

The facilities known as the Andy and Syd Cohen Center, El Paso County, Texas, municipally known and numbered as 9700 Gateway North Blvd., El Paso, Texas.

Assignor now proposes to assign the Lease to El Paso Professional Baseball, LP, a Texas limited partnership.

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to El Paso Professional Baseball, LP, ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Assignor guarantees payment of rent to the Lessor for the first year of Assignee's occupancy under the existing term of the lease, which will expire on September 30, 2005 (the "Guaranteed Payment"). The Guaranteed Payment shall not in any event exceed a maximum aggregate amount of \$25,000. Assignor has satisfactorily performed all of its contractual obligations during the term of its occupancy. Therefore, the Lessor shall, and hereby does, release Assignor and Springfield Cardinals, LLC, and their respective officers,

directors, members, managers, partners, employees, agents, successors, parent, subsidiaries and affiliated person or entities from and against any and all liability, costs, expenses, damages, whether incidental, special, consequential, or exemplary, and from any and all claims, whether legal or equitable in nature, which are in any way related, directly or indirectly to the Cohen Stadium Lease. Without limiting the generality of the foregoing, it is the intent of this clause to fully release the Assignor from all obligations under the Lease other than the Assignor's obligations with respect to the Guaranteed Payment.

4. **OPTIONS TO EXTEND LEASE.** Provided Assignee is in full compliance with all the terms of the Lease, as amended, it shall have the option to extend the Lease for two (2) additional five (5) year periods under the same terms and conditions in effect at the time each option is exercised with the exception of the rent which shall be adjusted on an annual basis as set forth in paragraph 6. In order to exercise the first option, Assignee shall notify the Lessor in writing no later than June 30, 2005. In order to exercise the second option, Assignee shall notify the Lessor in writing no later than June 30, 2010.
5. **INITIAL RENT.** In lieu of the Base Rent Percentage Rent and shared Parking Revenue specified in the Lease, the rent payable to the Lessor for the remainder of the lease term shall be THIRTY THOUSAND and NO/100 dollars (\$30,000.00). FIVE THOUSAND and NO/100 DOLLARS (\$5,000.00) was paid on September 1, 2004 and the remainder shall be paid as follows:

\$12,500.00 to be paid on February 8, 2005
\$12,500.00 to be paid on September 1, 2005.

6. **AUTOMATIC RENTAL ADJUSTMENTS.** In the event Assignee is in full compliance with the terms of the Lease, as amended, and exercises its option to extend the Lease as specified in paragraph 4, the rent shall be adjusted as follows:

Commencing January 1, 2006, and at one (1) year intervals for the rest of the term as it may be extended by options, the yearly rent will be due and payable and will be adjusted as set forth in this section to reflect increases in the following Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor: Consumer Price Index--All Urban, All Items, Dallas-Fort Worth Area, using 1982-84=100 as the base year. The index numbers will be taken from this consumer price index as follows:

- a. The adjustments in the yearly rent are determined by multiplying \$30,000.00 by a fraction, the numerator of which is the index number for the last month of the calendar year that ended immediately before the date on which the adjustment is to be made and the denominator of which is the index number for the first

month of the first year of the lease term. If the product is greater than the minimum yearly rent of \$30,000.00, Assignee will pay this greater amount as the yearly rent until the time of the next rental adjustment as called for in this section. If the product is less than \$30,000.00, the annual rent will not be adjusted at that time, and Assignee will pay yearly rent of \$30,000.00 until the time of the next rental adjustment as called for in this section. In no event may any rental adjustment called for in this section result in an annual rent less than \$30,000.00.

- b. If the CPI-All Urban, All Items, Dallas-Forth Worth Area is discontinued during the lease term, the remaining rental adjustments called for in this section will be made by using the statistics of the Bureau of Labor Statistics of the United States Department of Labor that are most nearly comparable to the Consumer Price Index—All Urban, All Items, Dallas-Forth Worth Area. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or to publish statistics concerning the purchasing power of the consumer dollar during the lease term, the remaining rental adjustments called for in this section will be made by using the most nearly comparable statistics published by a recognized financial authority selected by Lessor.

7. **RENTAL SCHEDULE.** Upon approval of this agreement, Lessor agrees that Assignee shall no longer have to submit a Rental Schedule of costs for use of the Public Access Facilities every two years.
8. **LEASING POLICY.** The Leasing Policy attached hereto as Exhibit "B" shall be applicable for the lease term as extended by options.
9. **RATIFICATION OF LEASE.** No provision of this consent alters or modifies any of the terms and conditions of the Lease. Except as expressly modified herein, all terms and conditions of the Lease shall remain in full force and effect.
10. **ADDRESSES FOR NOTICES.** Notices required by the Lease shall be sufficient if sent by certified mail, postage prepaid, addressed to:

LESSOR: City of El Paso
2 Civic Center Plaza
El Paso Texas 79901
ATTN: City Manager

Copy to: City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901
ATTN: City Attorney

ASSIGNEE: El Paso Professional Baseball, LP

ATTN: _____

11. **AUTHORIZED REPRESENTATIVE.** The person signing this Lessor's Approval of Assignment on behalf of the Assignee represents and warrants that he or she has the authority legally to bind the Assignee to the provisions of this Lessor's Approval of Assignment.
12. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.

The parties have executed this Lessor's Approval of Assignment and Lease Modification Agreement this 8th day of February 2005.

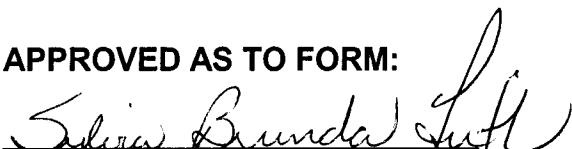
LESSOR: CITY OF EL PASO:

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:


Deborah Hamlyn
Deputy City Manager
Quality of Life Services

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

ATTEST:

[Signature]
 Printed Name: PETER GRAY, Manager

ASSIGNOR: EL PASO BASEBALL CLUB, LP
 By EPBC GP, LLC General Partner

By: [Signature]
 Printed Name: Robert A. Brett
 Title: Manager

ATTEST:

[Signature]
 Printed Name: David Pearlman

ASSIGNEE: EL PASO PROFESSIONAL BASEBALL, LP, a Texas Limited Partnership

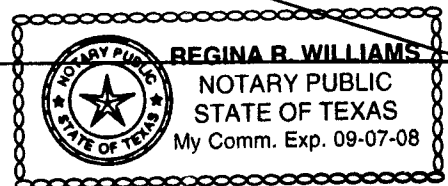
By: [Signature]
 Printed Name: Mark Schuster
 Title: President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
 COUNTY OF EL PASO)

This instrument was acknowledged before me on this 27 day of ~~February~~ ^{January} 2005, by Joe Wardy as Mayor of the City of El Paso, Texas ("Lessor").

My Commission Expires: 9-7-08
[Signature]
 Notary Public, State of Texas

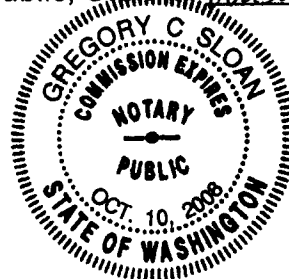


ACKNOWLEDGEMENT

THE STATE OF Washington)
)
 COUNTY OF Spokane)

This instrument was acknowledged before me on this 19th day of January, 2005, by Robert A. Brett as the manager of EPBC GP, LLC, the general partner of El Paso Baseball Club, LP ("Assignor").

My Commission Expires: Oct. 10, 2008
[Signature]
 Notary Public, State of Washington



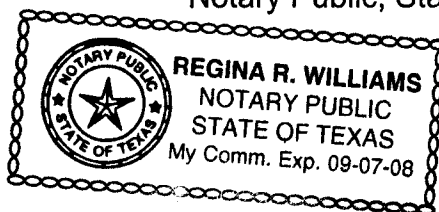
ACKNOWLEDGEMENT

THE STATE OF TX)
)
COUNTY OF EL Paso)

This instrument was acknowledged before me on this 27 day of January, 2005, by [Signature] as President of El Paso Professional Baseball, LP ("Assignee").

[Signature]
Notary Public, State of TX

My Commission Expires:
9-7-08



ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of February 2005, by Joe Wardy as Mayor of the City of El Paso, Texas ("Lessor").

My Commission Expires:

Notary Public, State of Texas

EXHIBIT "B"
COHEN STADIUM
LEASING POLICIES

SECURITY:

There shall be a minimum of two (2) uniformed security officers for every spectator event. Promoters or other persons renting the stadium will bear the cost for adequate security protection.

El Paso Professional Baseball, LP may waive the uniformed security requirement for events at Cohen Stadium for which no tickets will be sold and do not intend to attract spectators.

BOND OR DAMAGE DEPOSIT:

The Stadium Director will require the Lessee to furnish a bond or damage deposit commensurate with risk (to include the stadium expenses), in cash or with sureties satisfactory to the Stadium Director, guaranteeing that the Lessee will well and faithfully perform each and every item and condition of the contract and will abide by and observe all lawful rules and regulations for the use of the stadium. Any exhibition or performance or any part thereof deemed by the Stadium Director to be illegal, or indecent, obscene, lewd, immoral, or in any manner offensive to persons of ordinary sensibilities shall constitute grounds for forfeiture of the deposit.

If said event is proposed to be held on the playing surface of Cohen Stadium, the Stadium Director will determine if said event would be harmful to the playing surface.

INSURANCE:

The Director will require the Lessee to furnish a certificate of public liability insurance showing that insurance is in force in which the Lessee is named as insured, with El Paso Professional Baseball, LP and the City of El Paso named as additional insured. The minimum required is \$250,000 for injuries, including death, sustained by one person; \$500,000 for injuries, including death, for two or more persons; and \$250,000 for property damage. All insurance policies will have no deductible. Additional coverage maybe required for high risk events. The term of such coverage to coincide with the dates of this agreement, including move-in and move-out. Lessee agrees that such policy or certificate will include the wording as required.

Lessee agrees to indemnify, defend and hold harmless the Lessor (El Paso Professional Baseball, LP and the City of El Paso) from all demands, claims, suits,

actions or liabilities resulting from injuries or death to any persons or property damage or loss by Lessee, Lessor or any persons, howsoever caused, during the period which this agreement covers for use of the leased space, or occurring as a result of the use of such space during the agreed period.

This policy shall also provide for 10-day notice to Director of Parks and Recreation and Stadium Director prior to cancellation.

DAMAGE TO PREMISES:

The Lessee will not cause or permit any nails, spikes or anchoring devices to be driven into or affixed in any manner to any interior or exterior portion of the building(s) without direct consent and under the supervision of the Stadium Director; nor may any signs, posters or advertising material of any nature be affixed to any portion or placed in any part of the premises without consent of the Stadium Director. The Lessee shall not paint, stain, color, or alter any portion of the premises or equipment therein, and will not permit anything to be done which might damage or change the finish or appearance of the premises and furnishings therein. **SMOKING AND DRINKS WILL BE RESTRICTED TO DESIGNATED AREAS.** The Lessee shall pay the cost of repairing any and all damage which may be done to the premises, including fixtures, equipment and furnishings by an action of the Lessee or his employees or agents. The Stadium Director shall determine whether any such damage has occurred, the amount of damage and the cost of repairing such damage, and whether the damage is of a nature that the Lessee be held responsible for.

The decision of the Stadium Director shall be final unless, within 10 days after he makes his decision, the Lessee, if he is dissatisfied with the decision and gives written notice, the Stadium Director shall submit the appeal to the Director of Parks and Recreation Department.

By acceptance of a contract, Lessee shall covenant and agree to relieve and discharge Paso Professional Baseball, LP, the City of El Paso, the officers and employees of the City from any and all liability for loss and/or injury, and/or damage to any person and/or persons, and/or property that may be sustained by reason of occupancy and use of said Stadium and of the facilities thereof, and to save them free and harmless therefrom.